

Significance of Riba & interest

By Hamza Alavi - Dawn newspaper Pakistan Feb 9, 2000

THE judgment of the Shariat Appellate Bench (SAB) of the Supreme Court (which has yet to be published in full) on the appeal against the 1990 Riba Judgment of the Federal Shariat Court, outlaws 'interest in every form'. As we shall see, the SAB could not have been fully aware of the gravity of their judgment, which is a threat to the stability and viability of the Pakistan economy. They have failed to read the Quran contextually and thereby have misconstrued its meaning. They have even ignored what the Quran has said quite explicitly about riba, in Surah al-Imran (III/130). The position taken by the SAB is indefensible.

In part I of this article we shall look at the crucial matter of reading the Quran contextually, differentiating between 1) universal general principles and values that underlie Quranic statements and 2) the forms in which values and general principles are embodied, when applied in particular social structural and historical contexts. In part II we will proceed to look, comparatively, at the function of riba, or usury, in the pre-capitalist Bedouin nomadic society and the functions of interest in the complex modern capitalist (and post-capitalist) societies of our own day, whose complex economic machinery is regulated by interest.

The enthusiasm of religious leaders in welcoming the SAB decision is hardly surprising. They are misled by dogmatism and preconceived notions, and by taqlid which so many scholars (including Iqbal) have criticized often enough. Such a dogmatic approach to the faith has now been given the stamp of authority by the Shariat Appellate Bench of the Supreme Court. The government's response has been to set up a commission 'to Islamize' the financial system. One hopes that the Commission will review the SAB decision and overturn it, and not just try to implement it without further thought.

Let us first look at the general question of how to apply Quranic injunctions to practical issues of our day. Their full meaning and significance cannot be found unless we look at them contextually. They can best be understood if we look at the social and historical contexts of their asbab al-nuzul. That is a complex task. Mere taqlid is useless. Nor can Ijtihad be undertaken in narrow theological terms. The asbab al-nuzul of Quranic texts must be looked at in their wider social and historical contexts that give them their full meaning. On the issue of riba or usury, we should look at it in the context of the Bedouin nomadic pre-capitalist economy of 1400 years ago and compare it with the function of interest in our own modern economies. That task calls for knowledge not only of the Quran but also that of the working of the respective economies and their functional needs. That demands wide-ranging expertise.

Jurists are handicapped in this matter because their training and experience are literalist. Their minds are oriented towards interpretation of the texts of laws. That tends

to circumscribe the intellectual horizons of our judges - and understandably so. A legalistic and literalist training is not, in itself, a bad thing. There should be certainty and predictability about legal prescriptions. A literal interpretation of the law is necessary. If a law is bad, and a literal application of it leads to bad judgments, the ball would be thrown back into the court of legislators. In a democratic society it is they who must bear the responsibility to improve it.

Shariat Courts, however, are not ordinary courts of law. The function, allotted to them by Gen. Zia in his misguided autocratic zeal is virtually that of law making. Shariat Courts are expected to formulate binding decrees that claim to embody the Sharia. That is tantamount to law making. The idea of defining the Sharia in this way, in fact, goes beyond law making, for Shariat Court decisions masquerade as religious canon. The judges, as fallible human beings, are not fitted to accomplish such a task. It is a delusion to think that 'scholarship' as such is a guarantee to achieve that end. In a democratic society, law making has to be an ongoing process, guided as it may well be by the religious faith of the citizens. Law making must be left to legislators, who must be answerable to the community, and their decisions subject to challenge and amendment.

Interpretation of Quranic injunctions would be straightforward if only there were a total consensus in society about what they mean. In the absence of consensus, we can only have contending views that must be allowed to interact freely and without coercion in the democratic process. Quranic injunctions should not be treated as simple formulae. They must be understood. Devout Muslims would search for their underlying essence, for which the texts should be read contextually. There are two aspects of this. Firstly, it has to be recognized that Quranic texts embody general principles and basic values, their essence. Secondly, such essence, the general principles and values are concretized, in particular social and historical contexts, into specific rules of conduct. Such concrete formulations give ordinary people simple rules that they can understand and implement. To understand many Quranic propositions, one would have to begin with their asbabul nuzul, and the social and historical contexts in which they appeared.

Basically, the context was that of the tribal nomadic society of Hejaz and Nejd. When the social contexts change, the significance of particular formulations can be altered. It is the underlying general principles and values that are crucial. A literalist approach, when attention is focused on the specific concrete formulations of Quranic texts rather than on the underlying principles and values, can therefore be grossly misleading. Mechanical and formal taqlid will not do. Religious leaders and jurists, with their literalist training, often lack knowledge of societies and economies to have insights that may illuminate the fresh significance of old formulae.

One or two examples of the way in which, in some cases, changes in social and historical conditions can fundamentally alter the meaning and purpose of old formulations may clarify this question of contextuality. One such example is that of qisas and diyat which

resolved a crisis of the Bedouin society, when they were originally introduced. They proved to be a great blessing. But they acquired quite a different meaning when they were misguidedly applied in our present-day society by General Zia.

The rules of qisas and diyat were a revolutionary step when they were introduced by the Prophet to resolve a crisis that arose in the nomadic Bedouin society of Madina. To understand its significance we must look at the nature of that crisis. Few realize that the blood feud, in pre-Islamic nomadic Bedouin society, was a mechanism by which social order was maintained. There is an extensive anthropological literature which shows how that worked. In practice, although killing in pursuit of a feud was legal, there was not much actual killing.

During the dry season entire clans would gather at the clan well. That would make it utterly foolhardy for anyone to go amongst them to kill anyone. On the other hand, after the rains, members of the clans would fan out in every direction, literally for hundreds of kilometres, looking for a pasture. In the vast expanse of the Arabian desert it was difficult to find your quarry to kill him. In practice, the rule to kill was only nominal.

A major crisis was, however, precipitated when some nomadic tribes began to settle down on land and took to sedentary agriculture, as it was in the case of 'Aws and Khazaraj in Madina. The situation with regard to the blood feud now changed fundamentally. The tribesmen found that the person whom they were supposed to kill, under feuding rules, was to be found standing in the next field. That resulted in far too much actual killing for society to be viable any longer. They all realized that. It was at that point that the Prophet (PBUH) came into the picture, after the Hijrat. He resolved the crisis by his revolutionary intervention. He introduced rules of qisas and diyat which put an end to the endless killing in pursuit of blood feud. Once blood money was paid there was no more killing to be done and the cycle of reciprocal killing was ended. That brought peace to that society. It was a revolutionary change. The laws of qisas and diyat proved to be a great blessing.

Ours is not a feuding society. When someone is killed, the law of our state prescribes punishment for the killer. That is neither the responsibility nor the prerogative of the clansmen of the victim, as it was in the Bedouin nomadic society. Retaliatory killing is not permitted by our laws nor is it legitimate. Qisas or just retribution, such as 'free for the free, slave for a slave or woman for a woman', and remission, as in Surah al-Baqarah, II/178-179) and diyat (compensation or indemnity, as in Surah al-Nisa, IV/92) would not now have the same significance in today's society as that of the society in which they were introduced, for we have no problem of having to put an end to socially accepted and legalized blood feuds.

In our case, instead, the idea of blood money can allow a murderer to escape the full penalty of the law for his crime by payment of blood money. If it were at all a matter of compensating the survivors, provisions can easily be made in our law requiring the culprit

to compensate the survivors. There can be little justification now, however, for giving murderers the option of qisas and diyat in our changed circumstances. Changes in social conditions radically alter the social functions of what was once prescribed for good reasons.

An even more glaring example of the kind of misunderstanding that can arise with reference to concrete Quranic provisions, through a blind and literal reading, would be that of *nafl* or *ghanimah*, the booty taken after raids and battles, about which the Quran lays down some rules. This is dealt with in Surah al-Anfal (VIII/1 and 41) and Surah al-Hashr (LIX/4-8). Raiding of caravans was a normal and regular practice in the tribal nomadic Bedouin society. The raids (on caravans, etc.) were functionally necessary for those societies which could not produce all the goods that they needed for their survival. Anthropological studies show how that works. 'Trade and raid' were necessary practices to ensure the viability of the Bedouin nomadic societies. The Quran recognized that need and accepted it.

Modern scholars, such as Yusuf Ali, Muhammad Asad and others, are unable to understand that functional need for raids, for the viability of the Bedouin nomadic societies. They are unable to stomach the idea that the Quran recognizes and allows such raids and the seizure and division of booty, for which it even lays down rules. They have therefore gone so far as to take upon themselves to amend the Quranic text itself in their English translations! They insert after the word 'booty', as it occurs in the Quranic text, the phrase 'in war' (al-Anfal - VIII/41). They restrict thereby the meaning of the passage to booty seized in war, thus excluding booty seized in raids from the Quranic rules. That is an unwarranted liberty taken with the Quranic text, altering its meaning radically.

It is important for our present purpose to recognize that the Quran refers to all booty, that seized in raids, as well as that taken in wars. The point will be clear if we refer to the *asbab al-nuzul* of that Surah (al-Anfal) for the context makes it quite clear. That surah was revealed at the time of the Battle of Badr. In the month of Sha'ban of 2 AH, Muslims of Madina learnt that a great Makkan caravan, led by Abu Sufiyan, would pass near Medina. In keeping with Bedouin practice, they decided to attack it for booty. Abu Sufiyan, having learnt of their plan, arranged for a large Makkan army to come to his rescue.

According to Asad, when the Madinans (Muslims) set out for the expedition, they were under the impression that they were going to attack the trade caravan and its weak escort. Instead, they were faced with a powerful Quraysh army that was three times their number. The Madinan purpose was to raid the caravan and not to go to war with the large Makkan forces. The Quran makes that quite clear when it says (to the people of Madina) 'If you had known that a battle was to take place, you would indeed have refused to accept the challenge' (VIII/42). Thus it is clear that Surah al-Anfal deals with seizure of booty in raids as well as in war. That has puzzled our Islamic scholars, who are unaware

of the social function of raids and seizure of booty for the survival of the nomadic Bedouin society.

In our own society it is quite different. We do not resort to raids for our economic survival. It would be unthinkable that anyone in his senses would today justify raids on, say, trucks and railways, the modern equivalents of caravans, and justify seizure of booty, claiming that the Quran justifies that. Nor do modern armies engage in plunder and pillage. These practices, to which the Surah al-Anfal refers, no longer exist, nor can they be justified today merely by reference to Surah al-Anfal. The Quran must therefore be read and understood contextually. That is an essential lesson about how to read the Quran.

It is in the light of our recognition of this need to read the Quran contextually that we can proceed to consider the questions of 1) riba in the pre-capitalist society of the nomadic Bedouins, and 2) interest in modern societies, with reference to their respective social functions. The SAB seems to have been grossly misled about that. We shall look at them in Part II of this article.

For the present, it needs to be pointed out that, quite apart from the question of the need to read the Quran contextually, there is even an explicit statement in the Quran about what is meant by riba which the SAB seems to have ignored, for otherwise it would not have reached the judgment that it has done, banning 'all forms of interest'. In Surah al-Imran (III/130) the Quran says, 'Do not gorge yourselves on usury, doubled or multiplied' (tr. Yusuf Ali). The meaning here is quite plain. Ordinary rates of interest, as we find them in our society, do not result in the doubling or multiplication of the amount lent. That comes about only through exorbitant rates of usury.

It is quite clear therefore that by riba the Quran means usury, or lending at exploitative and exorbitant rates and not the ordinary phenomenon of interest as we encounter it normally in our economy. Given that explicit statement in the Quran, it is beyond comprehension how the SAB has overlooked it, when it is so clear, in defining riba. Evidently they were driven by their own preconceived notions and prejudices.

It might well be that the SAB was misled by an extensive but 'inconclusive' debate of medieval scholars, to which Asad refers in the notes accompanying his translation of Surah al-Imran. That debate took place at a time of far-reaching social transformations that were occurring during the al-'asr al-dhahabi, the golden age, of the Abbasid dynasty, the century between the reigns of al-Mansur (754) and al-Wathiq (842-847)-notably during the reigns of Haroun al-Rashid and his son al-Mamun. That time saw the beginning of incipient commercial capitalism, with great expansion of long-distance trade, combined with some emerging capitalist production also.

In that changing historical, social structural, context, interest had begun to acquire a new and a positive function in the organization of the economy, which was now visible to

many scholars who therefore had begun to defend it. Others whose vision was still entrapped by the context of the pre-capitalist society, were unable to see this. That is why the debate was 'unresolved'. It is in that light that we may now turn to consider the role of interest in modern societies to which we shall turn in Part II.

Significance of Riba and interest-II: Riba & the modern economy

By Hamza Alavi - Dawn newspaper Pakistan Feb 10, 2000

IN pre-capitalist societies, such as that of the Bedouin tribal nomadic society of Hejaz and Nejd, borrowers were needy consumers who were in temporary difficulty. Occasionally a merchant whose caravan, for example, was delayed would want to borrow for a short period. But borrowers were mainly small consumers who were in temporary difficulty.

Borrowing did not play any part in the organization of the process of production. The lenders were the rich and the powerful who exploited the need of the poor. Because it was harsh and exploitative, and fulfilled no positive function for society as a whole, usury, or riba, was universally hated.

That was so not only in the world of Islam but also in medieval Europe, China India etc. Usury was condemned everywhere as an evil. It was exploitation of human need through the charging of exorbitant interest. It was a moral issue. The evil of usury still exists in our own society, though only on its margins. In rural areas small peasants can still be victims of usury. That evil can, however, be dealt with by specific laws against usury, without going so far as to ban interest itself, which will be disastrous for our economy as a whole.

Today the equation between borrowers and lenders is the opposite of what it was in pre-capitalist societies. It is the lenders who now tend to be the weak parties, being mostly small middle class and lower middle class bank depositors. They rely on bank interest from their hard earned savings, to generate an income for their retirement and old age. Typically, they are not rich or powerful. They do not exploit the borrowers, who are mainly big capitalist entrepreneurs and corporations, including multinational companies who need to raise money to finance their operations.

Banks perform a necessary social function. They gather together the small amounts of capital saved by middle-class and lower-middle-class depositors, which are then available in the form of substantial amounts that are put to work by the borrowers to finance productive activities. The issue today has ceased to be a moral one, namely that of protecting weak and vulnerable borrowers. The borrowers are neither weak nor vulnerable. For the bank depositors, on the other hand, the banks' role in the

organization of funds provides a golden opportunity to put their savings to work in a safe and relatively secure way.

It may well be that the gimmickry of the so-called 'Islamic banking' can meet some of these needs of borrowers and lenders, although in an unnecessarily roundabout way. But the problem goes far beyond the ability of such gimmickry to meet it. The basic issue is that of the economic functions of credit and interest in the working of our economy as a whole. Borrowing and lending are no longer merely bilateral transactions, whose significance can be treated purely as a matter between the borrower and the lender. Credit and finance operate in a multilateral way. Their role can be judged only with reference to the working of the economy as a whole. Financial flows are an integral part of the macro-economic structure of our economy. Islamic banking (a misnomer, as it stands) does not come anywhere near providing the indispensable overall framework needed to channel and regulate financial flows which are the lifeblood of the modern economy.

In modern societies (both capitalist and post-capitalist, as it was in the erstwhile Soviet Union) credit and interest are pivotal to the working of the economy because in the place of the localized self-sufficiency of pre-capitalist economies, we now have an extensive division of labour and specialization of production, within the country as well as internationally. This widely dispersed production (nationally and globally) has to be brought together into a coherent whole. The widely dispersed productive activities have to mesh with each other so that in effect they operate as an integrated whole. That economic integration is brought about through the extensive network of trade and exchange and, in turn, by the elaborate but well co-ordinated financial flows that are generated by such activities.

Credit and interest are therefore central to the working of the intricate modern economies. Financial flows are the life-blood of the modern economic systems. That can be understood only within an overall economic framework which calls for a specialized knowledge of macro-economics, monetary economics and finance. Mere theological or judicial training does not help.

Interest rates regulate financial flows that are at the heart of the extensive system of production and exchange, in both capitalist and post-capitalist societies. By virtue of the pervasive role of finance, interest rates are an indispensable regulatory mechanism for the working of the economy. For example, when there is pressure on a country's balance of payments, the central bank raises interest rates to ease adverse pressures of international financial flows. When the economy is sluggish, the central bank lowers interest rates to stimulate it. One can hardly summarize in a few words the far-reaching role of credit and interest in the working of a modern economy. The government's commission of inquiry would do well to turn to monetary economists, bankers,

businessmen and trade unionists who have a better grasp of the day-to-day processes that this entails.

The so-called experts on Islamic banking have no clue about how the complex machinery of modern economies actually operates in a macro-economic framework. Their perspective tends to be a narrow one of bilateral transactions and fails to grasp the implications of the working of the economic and financial system as a whole. The best that they can do is to produce gimmicks which by themselves may not do much harm, so long as the overall framework of the wider financial system remains unharmed.

It will be disastrous if their half-baked notions are taken at face value to justify abolition of interest as such. That would jeopardize the proper working of the complex web of the modern financial system. If you take away interest rates as a regulatory mechanism of the modern economy, it will be totally disrupted beyond repair. That will invite financial chaos. The Pakistan economy is chaotic enough and we can hardly afford to invite more of that.

There is yet another, crucial, function that interest rates play, which is much less understood. That is certainly beyond the comprehension of our so-called experts on 'Islamic banking'. That is the role of interest rates in determining investment criteria and choice of techniques in investment decisions for production processes in modern economies. That is brought about through an equation of the cost of capital, as determined by interest rates, and that of wages. That problem, quite obviously, did not arise in the Bedouin tribal nomadic society. But it does today. This is not widely understood, not even amongst economists where they do not have the requisite specialized training.

Our industrialists can understand well enough though, in practice, how to equate the price of capital with the corresponding wage bill and choose between available alternative production techniques, entailing a greater or lower degree of mechanization. Interest rates decide that key equation. This is vitally important for us, especially in a country that is short of capital and has plenty of unemployed labour.

We do not have space enough here to give an account of how this problem of investment criteria and choice of techniques, was confronted in the Soviet Union after the revolution. When Soviet economists began to examine that question, Stalin dogmatically ruled that interest was a capitalist phenomenon and had no place in a socialist society. A heavy price was paid for that ideological ruling, which introduced irrationalities in Soviet planning. The problem could not be abolished merely by Stalin's order and ways were found around it, surreptitiously. So all was not lost. As some studies have shown, Soviet planners and managers of industrial enterprise secretly worked out, independently of each other, formulas to deal with that intractable problem. In effect, as some studies have shown, they all ended up applying interest and discount rates, although their solutions had to be disguised in technical jargon.

Those temporary make-shift solutions worked after a fashion, but still led to enormous losses which the Soviet economy could ill afford. It was not until the mid-fifties, after Stalin's death, that the issue was reopened and debated openly. In that debate the issue was referred to as that of 'Efficiency of Investment'. That led to a proper recognition of the role of interest and discount rates in regulating the Soviet planned economy. Anyone who is interested can look up that debate in the Russian journal Voprosy Economikii and also in several western economic journals and books in the mid-fifties. That should be an eye-opener for our 'experts'.

What ought we to do? We cannot abolish interest, for we cannot abolish our modern economy and return to the simple subsistence economy of the tribal nomadic society of Hejaz and Nejd of 1400 years ago. As long as our economy remains what it is, abolition of interest would amount to throwing a spanner in the works of the delicate machinery of our economy. That can only invite fatal consequences. The Pakistani state cannot allow that to happen. Abolition of interest is tantamount to asking our nation to commit economic suicide.

This is a matter which our political system must address urgently. What role can institutions like the Federal Shariat Court and the Shariat Appellate Bench of the Supreme Court play in that? We have to recognize that they have been put in a position of making new laws, in the name of Islam. That is not a proper function of the judiciary which is answerable to no one. Making of laws is a matter for a democratically elected legislature to deal with. Nor does the judiciary have the breadth of vision that is needed for that task.

In a world in which the World of Islam is divided into numerous contending sects there can be no consensus about what alone is truly Islamic. Nor is it the business of the state to impose any particular version of it, thus necessarily excluding dissent. Sir Syed Ahmad Khan, long ago, pointed out that, unlike Roman Catholicism, Islam did not establish an office of Pope, with powers to issue authoritative decrees defining what the faith permits and what it or does not. Nor did Islam create an ordained priesthood, as thakedaras of the faith. Mullahs and Shariat Courts have no locus standi in matters of the faith. Islam, Sir Syed pointed out, is a religion of the individual conscience.

In the time of the Prophet and the Khulafa-i-Rashideen, there was, he said, an unequivocal authority at the centre of the world of Islam. But that could not be said of the regimes that followed. The domain of faith itself being fragmented into contending sects, no particular interpretation of the faith could be imposed on society as a whole, to the exclusion of the others. We must learn to tolerate each other's views and live together in peace. Whatever views we hold can be advanced peacefully through the democratic process.

The so-called 'experts' on Islam and the Sharia lawyers, judges and mullahs, strive to prescribe their own particular view to the community as whole. They cannot be given the

undemocratic privilege of imposing authoritative judgments on the rest of society from outside the democratic process. Those who have striven to establish reputations for themselves as 'experts' on Islam, have a professional stake in maintaining that 'Islamic' law should be imposed in that way. They argue that this has to be done because Pakistan was created to establish an 'Islamic society'. That is quite untrue, for Pakistan was not created to establish an 'Islamic state', whatever that might mean.

The Pakistan movement was a movement of under-privileged Muslims of India, led by the Muslim League which had no religious pretensions. Every religious Muslim group and political movement, such as the Jamiat-i-Ulema-i-Hind, Majlis-i-Ahrar, Jamaat-i-Islami, etc, in fact opposed the Pakistan movement to the very end, until the creation of Pakistan was itself a fact. After the partition, they turned round and have tried to climb on to the bandwagon, claiming that they are the true creators of Pakistan and the authors of the Pakistan ideology. They cannot be allowed to get away with this false claim.

No single human being, human agency or group has the right to impose its view, in matters of the faith, on others. That must be left to every individual conscience to decide for himself or herself. In a democratic society it is for the individuals to bring their convictions to bear on the democratic political process. Shariat Courts cannot be put in authority and allowed to usurp the privileges of democratic legislatures and become Islamic Popes. They are not designed to define the Sharia.